

REMARKS

In response to the Office Action dated September 1, 2009, Applicants have amended the claims, which when considered with the following remarks, is deemed to place the present application in condition for allowance. Favorable consideration and allowance of all pending claims is respectfully requested. The amendments to the claims have been made in the interest of expediting prosecution of this case. Applicants reserve the right to prosecute the same or similar subject matter in this or another application.

Claims 1-75 are pending in this application. By this Amendment, Claims 1, 13, 18, 25, 43 and 53 have been amended. Claims 1, 18 and 43 have been amended to recite that the non-nitrogen containing derivatives of a polyalkylene succinic anhydride are "selected from the group consisting of a polyalkylene succinic acid, a Group I and/or Group II mono- or di-salt of a polyalkylene succinic acid, a polyalkylene succinate ester formed by the reaction of a polyalkylene succinic anhydride or an acid chloride with an alcohol and mixtures thereof". Support for these amendments can be found throughout the specification, e.g., page 10, lines 7-12, and page 12, lines 15-19. Claims 13, 25 and 53 have been amended to clarify that the one or more dispersing agents of the Markush Group is a polyisobutylene succinic anhydride. Applicants respectfully submit that no new matter has been added to this application. Moreover, it is submitted that the claims as now presented place the subject application in condition for immediate allowance.

Applicants again note with appreciation the Examiner's indication in the Office Action that Claims 63-75 are allowed.

In the final Office Action dated September 1, 2009, the Examiner rejected Claims 1-11, 13-37, 39-51 and 53-62 under 35 U.S.C. §112, first paragraph, because the specification, while being enabling for the disclosed derivatives, does not reasonably provide enablement for all of the derivatives encompassed by the instant claims, i.e., the non-nitrogen containing derivatives of a polyalkylene succinic anhydride. Although not necessarily agreeing with the Examiner, independent Claims 1, 18 and 43 have been amended to recite that the non-nitrogen containing derivatives of a polyalkylene succinic anhydride are “selected from the group consisting of a polyalkylene succinic acid, a Group I and/or Group II mono- or di-salt of a polyalkylene succinic acid, a polyalkylene succinate ester formed by the reaction of a polyalkylene succinic anhydride or an acid chloride with an alcohol and mixtures thereof”. Such being the case, Claims 1, 18 and 43 as amended are believed to comply with the requirement for the first paragraph of 35 U.S.C. §112. Therefore, withdrawal of the rejection of Claims 1-11, 13-37, 39-51 and 53-62 under 35 U.S.C. §112, first paragraph, is respectfully requested.

In the final Office Action dated September 1, 2009, the Examiner has rejected Claims 1-11, 14-23, 26-37, 39-40, 42-45, 48-51 and 54-62 under 35 U.S.C. §103(a) as being obvious over Price U.S. Patent No. 3,140,997 (“Price”) in view of Valcho et al. U.S. Patent No. 4,601,837 (“Valcho et al.”). This rejection is respectfully traversed.

Nowhere does Price disclose or suggest a stable colloidal suspension comprising “(a) a dispersed phase comprising a major amount of one or more dispersed hydrated polymeric compounds selected from ... polymolybdates ... and, (b) an oil phase comprising one or more dispersing agents selected from the group consisting of polyalkylene succinic anhydrides, non-nitrogen containing derivatives of a polyalkylene succinic anhydride selected from the group consisting of a polyalkylene succinic acid, a Group I and/or Group II mono- or di-salt of a polyalkylene succinic acid, a polyalkylene succinate ester formed by the reaction of a polyalkylene succinic anhydride or an acid chloride with an alcohol and mixtures thereof, and mixtures thereof and a diluent oil, wherein the stable colloidal suspension is substantially clear” as presently recited in independent Claim 1.

Nor, for that matter, does Price disclose or suggest a process for preparing a stable colloidal suspension comprising:

“mixing, under agitation, (a) an aqueous solution comprising one or more hydrated polymeric compounds selected from the group consisting of polymolybdates ...; (b) one or more dispersing agents selected from the group consisting of polyalkylene succinic anhydrides, non-nitrogen containing derivatives of a polyalkylene succinic anhydride anhydride selected from the group consisting of a polyalkylene succinic acid, a Group I and/or Group II mono- or di-salt of a polyalkylene succinic acid, a polyalkylene succinate ester formed by the reaction of a polyalkylene succinic anhydride or an acid chloride with an alcohol and mixtures thereof, and mixtures thereof, and mixtures thereof and (c) a diluent oil to form a micro emulsion; and,

heating the micro emulsion to a temperature to remove sufficient water so as to produce a stable colloidal suspension comprising (a) a dispersed phase comprising a major amount of one

or more dispersed hydrated polymeric compounds selected from ... polymolybdates ... and, (b) an oil phase comprising one or more dispersing agents and a diluent oil, wherein the stable colloidal suspension is substantially clear” as presently recited in independent Claim 18.

Nor, for that matter, does Price disclose or suggest a process for preparing a stable colloidal suspension comprising:

“mixing, under agitation, an (a) aqueous solution comprising (i) one or more monomeric compounds selected from the group consisting of molybdenum ... and (ii) an effective amount of an acid capable of at least partially polymerizing the one or more monomeric compounds; (b) one or more dispersing agents selected from the group consisting of polyalkylene succinic anhydrides, non-nitrogen containing derivatives of a polyalkylene succinic anhydride selected from the group consisting of a polyalkylene succinic acid, a Group I and/or Group II mono- or di-salt of a polyalkylene succinic acid, a polyalkylene succinate ester formed by the reaction of a polyalkylene succinic anhydride or an acid chloride with an alcohol and mixtures thereof, and mixtures thereof and (c) a diluent oil to form a micro emulsion; and,

heating the micro emulsion to a temperature to remove sufficient water so as to produce a stable colloidal suspension comprising (a) a dispersed phase comprising a major amount of one or more dispersed hydrated polymeric compounds selected from ... polymolybdates ... and, (b) an oil phase comprising one or more dispersing agents and a diluent oil, wherein the stable colloidal suspension is substantially clear” as presently recited in independent Claim 43.

In order to establish a *prima facie* case of obviousness, the Examiner again maintains in the Office Action:

“It would have been obvious to one of ordinary skill in the art at the time of the instantly claimed invention to use the instantly claimed combinations and ingredients and amounts thereof and the methods of making the instantly claimed compositions because they are encompassed by the patentee and would have been expected to give the benefits disclosed by the patentee. ... It would have been obvious to one of ordinary skill in the art at the time of the instantly claimed invention to use the instantly claimed polyalkylene succinic anhydrides as the dispersants of Price because Valcho et al. shows such dispersants to improve the efficiency of molybdenum incorporation into similar dispersions and to improve product clarity at column 2, lines 31-37 and these improvements would have been expected in the compositions of Price.”

Applicants previously submitted a Declaration of Kenneth D. Nelson Under 37 C.F.R. §1.132 setting forth evidence that the combination of Price with Valcho et al. would not arrive at the claimed colloidal suspension. In response to this evidence, the Examiner states in the Office Action dated September 1, 2009 (emphasis added):

“The Nelson declaration of 7/24/08 has been fully considered. It attempts to show that use of the instantly claimed surfactants, as disclosed by Valcho, would not give stable colloidal suspension comprising a dispersed phase comprising a major amount of one or more dispersed hydrated polymeric compounds selected from ... polymolybdates ... and, an oil phase comprising one or more dispersing agents selected from the group consisting of polyalkylene succinic anhydrides, non-nitrogen containing derivatives of a polyalkylene succinic anhydride and mixtures thereof and a diluent oil wherein the stable colloidal suspension is substantially clear. The declarant gives comparative examples 1 and 2 which are exemplary example 2 of Price. Example 2 is not commensurate in scope with the full teachings of Price as previously noted. The declaration is not therefore commensurate in scope with the full disclosure of Price and is therefore not persuasive on this ground alone. The declarant forms a hazy solution. *It is not seen that the declarant follows the advice of Price and adjusts water as necessary as taught by column 2, lines 28-31 to give a complete solution. It is noted that “hazy” is contrary to “solution” also. It would seem that this difference from the prior art is sufficient to determine that the declarant did not follow the instructions of the patentee Price fully even prior to adding the above discussed and instantly claimed surfactant.* It is not seen that care was taken in selecting an HLB of the surfactant so as to match that of the dispersions of the

declarant's comparative examples and the dispersions of Price so as to obtain the colloidal dispersions of Price. The parameter is well known and could easily be selected to as to not give colloids of Price just as easily as the ordinary skilled artisan could choose this value to give the stable colloidal dispersions of Price. Price discloses no malodorous black solid. It is thus unclear if the example of the declarant makes the same thing as Price at all possibly due to the initial failure to make a complete solution as taught by Price. The failure of the declarant to achieve a colloidal dispersion according to Price cannot be attributed to the choice of surfactant therefore."

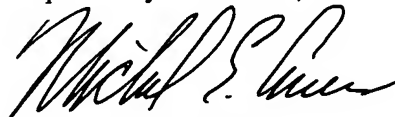
In response thereto, Applicants submit herewith a Second Declaration of Kenneth D. Nelson Under 37 C.F.R. §1.132. This Second Declaration clearly shows that a "stable colloidal suspension comprising (a) a dispersed phase comprising a major amount of one or more dispersed hydrated polymeric compounds selected from ... polymolybdates ... and, (b) an oil phase comprising one or more dispersing agents selected from the group consisting of polyalkylene succinic anhydrides, non-nitrogen containing derivatives of a polyalkylene succinic anhydride selected from the group consisting of a polyalkylene succinic acid, a Group I and/or Group II mono- or di-salt of a polyalkylene succinic acid, a polyalkylene succinate ester formed by the reaction of a polyalkylene succinic anhydride or an acid chloride with an alcohol and mixtures thereof, and mixtures thereof and a diluent oil, wherein the stable colloidal suspension is substantially clear" as generally recited in independent amended Claims 1, 18 and 43 cannot be obtained by following the broad teachings of Price as required by the Examiner, i.e., adjusting water as necessary as taught by column 2, lines 28-31 of Price to give a complete solution and using a dispersing agent according to Valcho et al. so as to match that of the dispersions of Price. Specifically, the colloidal suspension obtained in Comparative Example 1 set forth in the 132

Declaration was a cloudy beige color and the solids settled out of the suspension after 2 weeks. This is clearly different than the claimed stable colloidal suspension.

Nothing in Price and Valcho et al. would lead one skilled in the art to expect these results. As such, Claims 1-11, 14-23, 26-37, 39-40, 42-45, 48-51 and 54-62 are believed to be nonobvious, and therefore patentable over the combination of Price with Valcho et al., no matter how these references are considered or combined. Accordingly, withdrawal of the rejection of Claims 1-11, 14-23, 26-37, 39-40, 42-45, 48-51 and 54-62 under 35 U.S.C. §103(a) is respectfully requested.

For the foregoing reasons, Claims 1-11, 13-23, 25-37, 39-51 and 53-75 as presented herein are believed to be in condition for allowance. Such early and favorable action is earnestly solicited.

Respectfully submitted,



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Enclosure
Second Declaration of Kenneth D. Nelson Under 37 C.F.R. §1.132